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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/547,203

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Michael Weiler

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EXAMINER

GRAHAM, GARY K

ART UNIT

PAPER NUMBER

3727

MAIL DATE

DELIVERY MODE

11/25/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/547,203

Applicant(s)

WEILER ET AL.

Examiner

Gary K. Graham

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 32 is/are allowed.
- 6) ☒ Claim(s) 1-22, 26, 27, 29-31 and 33 is/are rejected.
- 7) ☒ Claim(s) 23-25 and 28 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 20090527
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 26 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 26 appears improper. The claim sets forth the spoiler and rod as a single piece and that such have an even profile ascending in a flow direction that is inclined by 40 degrees. Such appears directed to applicant's figure 7 embodiment, as evidenced by the reference numerals used. However, claim 1 defines the spoiler element as abutting with the rod along its length. There does not appear any abutment in the figure 7 embodiment since there is no discernable divisions which can be abutted. In other words, where is the claimed abutment? Additionally, in claim 26, it appears improper to attempt to define the spoiler element inclination based on the flow direction when such is not part of the claimed device. Absent the flow, which is not part of the device, what does such impart to the spoiler element?

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Forster (US patent 3,480,986).

The patent to Forster discloses the invention as is claimed, including a wiper device (figs.6-9) for a motor vehicle. The device includes a wiper arm comprised of an elastic wiper rod (A-4) coupled in a non-articulated, overlapping manner with a fastening part (19). The fastening part (19) may be provided with a rigidly associated knurled socket for installation on the knurled end (24) of a drive shaft (see column 3, lines 3-6). A flexible rubber wiping element (18) is provided on the wiper rod. The rubber sleeve (28) of the element (18) is considered to be part of the wiper arm in similar fashion to applicant's figure 10+ embodiments. Such sleeve is also considered as a “receptacle area” for the wiper rod.

With respect to claim 1, in like fashion to applicant, the elastic rod of Forster can be “divided” into two longitudinal halves, one being the rod and one being the spoiler. Wherein such rod and spoiler are in abutment along there length. Such appears consistent with applicant’s interpretation based on new claim 26. The spoiler half will interact with air flowing thereover.

With respect to claim 26, since the flow is not part of the claimed device, and no particular flow has been defined, it does not act to differentiate from Forster.

Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Mohnach (US patent 4,782,547).

The patent to Mohnach discloses the invention, a spoiler element, as is claimed. Mohnach discloses a spoiler element (30, fig.1) adapted for attachment to a wiper device which includes a wiper arm (12). The spoiler is configured to generate a flow-induced bearing force and is configured to substantially abut over its entire length on a wiper rod (28) of the wiper arm when said spoiler is attached thereto. Note that claim 11 is directed solely to a spoiler element. As such, Mohnach clearly meets the claim. Whether or not Mohnach discloses the same wiper arm as set forth in the claim does not appear of particular relevance since such does not make up part of the claimed spoiler. Such relates to the intended structure the spoiler is to be mounted on.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made

in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-9, 11-21, 29, 30 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forster (US patent 3,480,986) in view of Hollaender et al (German publication 10111757).

The patent to Forster discloses the invention substantially as is claimed, including a wiper device (figs.6-9) for a motor vehicle. The device includes a wiper arm comprised of an elastic wiper rod (A-4) coupled in a non-articulated, overlapping manner with a fastening part (19). The fastening part (19) may be provided with a rigidly associated knurled socket for installation on the knurled end (24) of a drive shaft (see column 3, lines 3-6). A flexible rubber wiping element (18) is provided on the wiper rod. The rubber sleeve (28) of the element (18) is considered to be part of the wiper arm in similar fashion to applicant's figure 10+ embodiments. Such sleeve is also considered as a "receptacle area" for the wiper rod.

The patent to Forster discloses all of the above recited subject matter with the exception of a spoiler to generate a flow-induced bearing force.

The publication to Hollaender discloses a unitary, rubber wiper blade (1). The blade includes provision of a spoiler (5) and wiping lip (3) on opposite sides of an embedded supporting spring rail or rod (4).

It would have been obvious to one of skill in the art to integrate a spoiler into the rubber wiper blade of Forster in a unitary fashion on an upper side thereof, as clearly suggested by Hollaender, to enhance downforce and blade contact with the windshield surface. Use of air spoiler or wind deflector is well known in the wiper arts.

With respect to claims 4 and 30, the receptacle area set forth above is considered as part of the spoiler element in the modified Forster device.

With respect to claim 5, 13 and 17, note locking connection (29).

With respect to claims 7 and 19, it appears the spoiler will be largely deflection resistant in a plane parallel to the windshield surface due to the spring rail or elastic wiper rod therein having a greater extent in this plane than the plane perpendicular thereto.

With respect to claim 26, the rod (A-4) of Forster is considered to constitute both the spoiler and rod. Such is consistent with applicant's reading of claim 26 on his figure 7 embodiment. It appears the rod of Forster can be divided in half such that half forms the rod and half forms the spoiler.

Claims 10 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forster (US patent 3,480,986) in view of Hollaender et al (German publication 10111757), as applied to claims 1, 2, 12, 16-21 above, and further in view of Mohnach (US patent 5,392,489).

The patents Forster and Hollaender disclose all of the above recited subject matter with the exception of the spoiler element having a changing cross-sectional shape in the longitudinal direction.

The patent to Mohnach discloses a spoiler (72) that has rounded ends (78,80).

It would have been obvious to one of skill in the art to round the ends of the spoiler of the modified Forster device, as clearly suggested by Mohnach, to reduce the number of square abrupt edges, thus reducing stress risers.

Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Forster (US patent 3,480,986) in view of Hollaender et al (German publication 10111757) and Mohnach (US patent 5,392,489).

The patents Forster and Hollaender disclose all of the above recited subject matter with the exception of the spoiler element having a changing cross-sectional shape in the longitudinal direction.

The patent to Mohnach discloses a spoiler (72) wherein the cross-sectional shape changes along the length thereof, in that it has rounded ends (78,80).

It would have been obvious to one of skill in the art to round the ends of the spoiler of the modified Forster device, as clearly suggested by Mohnach, to reduce the number of square abrupt edges, thus reducing stress risers. While applicant sets forth "consistent" changing cross-sectional shape, such does not appear to define any particular changing different from that suggested by Mohnach.

Allowable Subject Matter

Claims 23-25 and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 27 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claim 32 is allowed.

Response to Arguments

Applicant's arguments with respect to claims 1-22 and 26-33 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments with respect to Forster as applied above is noted but not persuasive. Applicant argues that the drive adapter (19) of Forster is connected in an articulated manner with the fastening part (23) so that the wiper arm can be pivoted about an axis of a pin (26). Applicant sets forth that therefore Forster lacks the feature that the fastening part is connected in a non-articulated manner with the wiper rod and that the fastening part is connected with the wiper rod via at least one elastic section of the wiper arm. Such is not persuasive. It is noted that the claim sets forth the wiper rod and a fastening part connected in a non-articulating manner. As set forth above, Forster discloses a wiper rod (A-4) connected in non-articulated manner with a fastening part (19). There is no articulation between these two parts. Further, this fastening part (19) can be rigidly coupled with the wiper shaft in non-articulated fashion. Applicant's attention is directed to column 3, lines 3-6 of Forster where such is clearly set forth. Note that the pivoting embodiment discussed by applicant is an alternative embodiment.

Applicant's arguments with respect to Hollaender as applied above are noted but not persuasive. Applicant argues that Hollaender uses a mounting device that is formed by a clamping part and that therefore Hollaender lacks the feature that the spoiler element abuts on its entire length on the wiper rod. Such is not persuasive. It is noted that Hollaender is only relied upon to teach a spoiler integral with a wiper lip mounted on a spring rod. Such a teaching incorporated into Forster results in the structure as claimed. Forster does not employ a mounting device or clamping part as discussed by Applicant. No mounting device or clamping part is required to be used in the

modified Forster device. It is noted that Forster has his own retention structure (29) that does not interrupt abutment as suggested by Applicant. Further, even if such a mounting device or clamping part were to be used, Applicant's claims only call for substantial abutment over the length of the spoiler. Use of the term "substantial" would allow for some leeway or potentially such clamping part.

With respect to claim 11, as set forth above, Mohnach meet this claim. While applicant argues abutment over the entire length of the wiper rod, such does not act to distinguish from Mohnach. Initially, it is pointed out that the spoiler of Mohnach does abut over its entire length with the wiper rod (28), see figure 2. Secondly, whether abutment actually occurs or not is not significant since the rod is not part of the claimed spoiler element. Such relates to the intended use of the spoiler only.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K. Graham whose telephone number is 571-272-1274. The examiner can normally be reached on Tuesday to Friday (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on 571-272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gary K Graham/
Primary Examiner, Art Unit 3727